EXHIBIT 3

Verizon New York Inc.
1095 Avenue of the Americas
New York, NY 10036
37th Floor
Tel 212 395-6509
Fax 212 768-7569

Joseph A. Post
Regulatory Counsel

March 20, 2001

REDACTED

THIS LETTER HAS BEEN REDACTED TO ELIMINATE PROPRIETARY INFORMATION. UNREDACTED COPIES HAVE BEEN PROVIDED AS INDICATED IN THE CC LIST AT THE END OF THE LETTER.

Honorable Janet H. Deixler
Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, New York 12223

Re: Case 99-C-0529 (WorldCom Rebuttal Presentation: Petition for Reconsideration)

Dear Ms. Deixler:

In its February 1, 2001 "Order Rejecting Rebuttal Presentation", the Commission concluded that WorldCom's "convergent traffic" rebuttal presentation, which aggregated the traffic and facilities of its separate operating companies, provided "no basis to decide whether MFS or Brooks, despite their overwhelmingly convergent traffic ratios, offer efficient tandem-like interconnection, warranting compensation for all traffic at the higher Meet Point B – Nonconvergent

Traffic (tandem) rates".[1] Accordingly, it found that WorldCom had not rebutted the convergent traffic presumption for either of the two companies. WorldCom now petitions for rehearing, presenting new, disaggregated network information for MFS and Brooks, and asking the Commission to rule that the presumption has been rebutted for each of those companies. The petition should be rejected.

A. WorldCom's Pleading Is Not A Proper Petition For Rehearing

WorldCom's pleading is not a proper petition for rehearing, and it should be rejected for that reason alone. Under Rule 3.7(b) of the Commission's Rules of Procedure, "[r]ehearing may only be sought on the grounds that the commission committed an error of law or fact or that new circumstances warrant a different determination". Here, however, the basis of the Commission's ruling was that the aggregate data submitted by WorldCom could not as a matter of law rebut the presumption for the individual operating companies. WorldCom's petition does not challenge that conclusion, and it does not argue that any relevant "new" circumstances exist. Rather, it seeks to make a new showing based on disaggregated data not previously presented to the Commission. WorldCom's pleading is in reality a *new* rebuttal petition, and it should be treated as such.

This is not simply a minor procedural shortcoming. Petitions for reconsideration are considered on the original record. A new and separate rebuttal filing, however, creates a new

[1] Order at 6-7. Indeed, MCI was included in WorldCom's presentation despite the fact that "the reciprocal compensation arrangements in the MCI agreement do not defer to the tariff and are not subject to the Opinion No. 99-10 presumption". (*Id.* at 6)

record and is subject to the procedures set forth in the Commission's August 31, 1999 "Notice Setting Procedures for Filings to Rebut Presumption". Under those procedures Staff, after reviewing the filing, may "report to the Commission with recommendations or, if it sees a need, seek further information through informal conferences, referrals to the Office of Hearings and Alternative Dispute Resolution, or such other procedures as appear warranted". By styling its request as a petition for reconsideration, WorldCom is apparently seeking to avoid the mandated preliminary Staff review as well as the possibility that the petition could be referred for evidentiary hearings. Verizon firmly believes, for the reasons set forth below, that the new presentation is inadequate as a matter of law and should be summarily rejected (even if it had been properly filed). Nevertheless, if the Commission disagrees, the matter should be referred to the Office of Hearings so that Verizon may have an opportunity to originate evidence of its own and to probe WorldCom's claims through discovery and cross-examination.

B. WorldCom's Petition Does Not Make A Showing Sufficient to Rebut the Convergent Traffic Presumption

Even if its procedural insufficiency were ignored, WorldCom's petition should be denied on the merits. We begin our analysis of this issue by reviewing some general principles that should govern the consideration of rebuttal petitions under Opinion No. 99-10.

The presumption established in Opinion No. 99-10 was based on the Commission's conclusion that unbalanced "convergent" traffic can generally be handled more efficiently, and at lower cost, than non-convergent traffic that must be routed to a widely dispersed base of numerous, low-volume customers. "As a general rule . . ., large convergent customers can be

served via more efficient, higher capacity facilities, and those facilities will likely have less idle time".[2] As the Commission recognized, since intercarrier compensation is meant to be cost-based, the lower costs incurred with respect to the delivery of convergent traffic warrant a lower compensation rate.[3]

This focus on costs is critical. Any rebuttal presentation must be examined not simply in terms of how many facilities of various types a carrier has, but from the perspective of whether those facilities are organized into a network with tandem-like functionality and cost characteristics; in other words, one that is designed to provide two-way service to a dispersed customer base.

To be sure, the Commission concluded that traffic exchange ratios in excess of 3:1 are not necessarily inconsistent with the existence of such a network, since a CLEC's current customer mix and traffic flow patterns may simply reflect "the newness of the competitive local exchange market".[4] Accordingly, a CLEC might design a "tandem-like" network, but use it — on an purely temporary basis, while it is acquiring a broader customer base — to serve a small number of customers and more concentrated traffic. But in such a case, unbalanced traffic exchange ratios would necessarily be a temporary phenomenon. The best evidence of what a CLEC network was designed to accomplish is what it is actually used for over a period of time.

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[2] Opinion No. 99-10 at 58.

[3] The FCC has indicated that it will shortly issue an order addressing intercarrier compensation for the delivery of Internet traffic. This filing is made by Verizon without prejudice to any position it may take concerning the impact of such order on, or its interaction with, the requirements of Opinion No. 99-10.

[4] *Id.* at 61.

If a CLEC has traffic exchange ratios that are *consistently* unbalanced, the conclusion must be that its network is designed to serve, and is being used to serve, convergent traffic, and that it is incurring and will continue to incur the costs associated with such traffic. This conclusion would be further reinforced if the ratios are growing over time.

The strength of the presumption — and the quantum of evidence necessary to overturn it — also depend upon the magnitude of the traffic exchange ratio. A CLEC with a double- or triple-digit ratio is clearly much more firmly committed to serving convergent traffic than one that has a ratio fairly close to the Commission's 3:1 threshold.

Under these general principles, the MFS and Brooks rebuttal presentations are clearly inadequate.

[BEGINNING OF PROPRIETARY DISCUSSION]

[END OF PROPRIETARY DISCUSSION]

The maps provided by WorldCom in Attachment B to its petition do not add anything meaningful to its equipment inventory. All that they demonstrate is that the WorldCom companies provide service within a reasonably-sized service area. However, the maps do not separate out the different operating companies, thus flouting the "disaggregation" requirement of the Commission's order, and in any event are not relevant to the question of tandem-like versus non-tandem-like functionality. As the Commission recognized in Opinion No. 99-10, the size of the geographic area served is irrelevant to the convergent traffic analysis:

> Bell Atlantic-New York correctly argues that "functional equivalence" does not require conclusively presuming that the costs of serving a small number of large customers located around a geographic area are no less than the costs of serving the mass market within that geographic area; notwithstanding AT&T's characterization of the standard as "geographic equivalence," it remains one of "functional equivalence," taking account, as Bell Atlantic-New York suggests, of how the CLEC "serves" the area and not merely of the area's size.

In other words, to quote an advertising slogan of the distant past, "It's not how long you make it, it's how you make it long".

Finally, the fact that the Commission concluded in a prior order that Cablevision had rebutted the presumption, does not mean that WorldCom is automatically entitled to a rebuttal ruling. Since this response will be served in unredacted form on WorldCom, we are not at liberty to discuss the details of Cablevision's own proprietary presentation, but the Commission

will recall that aspects of Cablevision's rebuttal showing, including particularly the relevant exchange ratios, that were totally unlike the circumstances shown by the WorldCom's petition.[5]

* * *

As explained above, it is clear that WorldCom has not succeeded in rebutting the 'convergent traffic" presumption. Its petition should be denied.

Respectfully submitted,

cc: **PROPRIETARY VERSION, BY HAND**

Kathleen Burgess, Esq
Mr. Daniel Martin

PROPRIETARY VERSION, BY E-MAIL AND U.S. MAIL

Curtis L. Groves, Esq.

Mr. Peter Nedbalsky
New York State Department of Public Service
One Penn Plaza, Sixth Floor
New York, NY 10119-0002
peter_nedbalsky@dps.state.ny.us

REDACTED VERSION, BY E-MAIL AND U.S. MAIL

All Parties to Case 99-C-0529

[5] It is of some interest that the Cablevision agreement establishes a 5.5:1 threshold for different levels of compensation; *see* Cablevision Agrement § 5.7.4, as amended effective November 8, 1999.

ATTACHMENT A
[PROPRIETARY DATA REDACTED]

Month		MFS RATIO

LATA 132	TO MFS	FROM MFS	RATIO
LATA 140	TO MFS	FROM MFS	RATIO
132 + 140	TO MFS	FROM MFS	RATIO

ATTACHMENT B
[PROPRIETARY DATA REDACTED]

Month		Brooks Ratio

	TO BROOKS	FROM BROOKS	RATIO

EXHIBIT 4

Jeffrey A. Masoner
Vice President Interconnection Services
2107 Wilson Blvd
11th Floor
Arlington, Va. 22201
Tel. 703 974-4610
Fax 703 974-0314

May 14, 2001

MCI WorldCom Communications Inc. f/k/a MFS Communications Inc.
General Counsel
1801 Pennsylvania Ave., N.W.
Washington, DC 20006

Dear Customer:

On April 18, 2001, the Federal Communications Commission ("FCC") adopted an order addressing the charges that carriers may bill to and collect from each other in connection with their exchange of dial-up Internet traffic. See, *Order on Remand and Report and Order*, CC Docket Nos. 96-98, 99-68 (adopted April 18, 2001) (the "Order"). This letter is intended to advise you of the key provisions of the Order, and to notify you of steps that Verizon is taking to implement the Order. Because the Order may have a material effect on your operations, please read this letter carefully.

In the Order, the FCC determines that Internet traffic is interstate exchange access traffic – specifically, information access traffic – and that such traffic is not subject to payment of reciprocal compensation under Section 251(b)(5) of the Communications Act. In addition, the FCC reconfirms its prior analysis that led to its earlier ruling that Internet traffic is not "local" traffic because a call to the Internet is one, continuous call and not two separate calls. In order to limit the regulatory arbitrage opportunity that has existed in those states where reciprocal compensation has been paid on Internet traffic prior to adoption of the Order, the FCC exercises its authority under Section 201 of the Communications Act to prescribe an alternative, transitional intercarrier compensation regime for Internet traffic.

In order to give effect to the Order, and to ensure its continued compliance with applicable law, Verizon will implement the following practices on the effective date of the rate-affecting provisions of the Order (*i.e.*, thirty days after publication in the Federal Register):

- To the extent Verizon is exchanging dial-up Internet traffic and traffic properly compensable under Section 251(b)(5) with you in a given state over facilities obtained under a particular interconnection agreement or local interconnection tariff, Verizon will presume, as an initial matter, that any such traffic that exceeds a 3:1 ratio of terminating to originating traffic is Internet traffic (and therefore interstate exchange access traffic). Either party may seek to rebut this presumption by

demonstrating to the appropriate state regulatory commission that traffic below this ratio is in fact Internet traffic, or that traffic above this ratio is non-Internet traffic that is subject to reciprocal compensation pursuant to Section 251(b)(5) of the Act. During the pendency of any such proceedings, traffic above the 3:1 ratio will continue to be governed by the intercarrier compensation regime set forth in the Order, and upon conclusion of such proceedings, compensation paid between the parties will be subject to true-up, if appropriate.

- Initially, and continuing for six months after the effective date of the Order, the intercarrier compensation rate for Internet traffic will be capped at $.0015 per minute of use. Starting in the seventh month, and continuing for eighteen months, the rate will be capped at $.001 per minute of use. Starting in the twenty-fifth month, and continuing through the thirty-sixth month or until further FCC action (whichever is later), the rate will be capped at $.0007 per minute of use. If state law has previously required payment on Internet traffic at a rate lower than the applicable rate caps established in the Order, or has previously required a lower rate structure for Internet traffic, such as "bill and keep," then that lower rate or rate structure may apply under the terms of the Order.

- The amount of Internet traffic on which Verizon will pay intercarrier compensation to you in 2001 in a given state may not exceed 110% of the total number of Internet-bound minutes for which you were entitled to compensation under your interconnection agreement or local interconnection tariff in that state in the first quarter of 2001, annualized. (The volume of compensable Internet traffic in 2002 may not exceed 110% of the 2001 compensable Internet traffic volume originated on Verizon's network in a given state, and in 2003 may not exceed the 2002 compensable volume originated on Verizon's network in that state.) Accordingly, if you were not exchanging Internet traffic with Verizon in the first quarter of this year, or if for any reason you were not entitled under your interconnection agreement or local interconnection tariff to compensation on Internet traffic during that period, then you will not be entitled to compensation for Internet traffic under the Order.

- Verizon will pay properly invoiced intercarrier compensation charges on dial-up Internet traffic that originates on Verizon's network on or after the effective date of the Order up to the rate caps and payment limits authorized by the Order, as described above. **You are hereby put on notice, to the extent such notice is required, that Verizon will not pay any amounts invoiced by you that exceed the applicable rate caps or payment limits, as described above.**

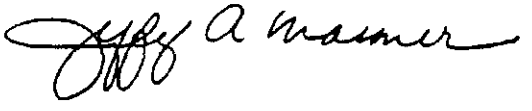
- With respect to those states in which the state regulatory commission or any court of competent jurisdiction has previously determined that you are entitled to receive compensation for Internet traffic under the terms of your interconnection agreement, the Order recognizes Verizon's right to invoke the change of law provisions set forth in that agreement. Without waiving its position that neither Section 251(b)(5) nor your current interconnection agreement or any relevant tariff obligates Verizon to pay or continue paying reciprocal compensation on Internet traffic, **Verizon hereby gives written notice, to the extent such notice is required, that the Order constitutes a material change of law in the aforementioned states. Verizon hereby invokes any and all rights it may have under your interconnection agreement or**

otherwise with respect to government orders affecting its obligations to you or other changes in law, including, where applicable, the right to terminate any provision of your interconnection agreement that imposes obligations on Verizon that are no longer required under applicable law.

The Order requires Verizon to offer all CLECs and CMRS providers an optional reciprocal compensation rate plan for termination of non-Internet traffic subject to Section 251(b)(5). Under this optional plan, such traffic exchanged between Verizon and a Local Exchange Carrier or CMRS provider in a given state will be subject to compensation at the same rate applicable to Internet traffic in that state under the terms of the Order. The terms and conditions applicable to this optional rate plan are available from your account manager or your designated Verizon Contract Negotiator, and will take effect no earlier than the date that is thirty days after publication of the Order in the Federal Register.

Because we anticipate that all parties will experience temporary billing difficulties in implementing the Order, you are encouraged to work with your assigned Verizon Account Manager to understand how the terms of the Order will be applied to you in each of the Verizon states in which you do business.

Very truly yours,



Jeffrey A. Masoner
Vice President Interconnection Services

EXHIBIT 5

Verizon Wholesale Services
1095 Avenue of the Americas
New York, New York 10036
Phone: 212 395-3202
Fax: 212 597-2681

Lori Carbone
Local Interconnection
Acting Manager

August 21, 2001

MCI WorldCom Communications, Inc.
Attn: Vice President
Eastern Telco Line Cost Management
2 Northwinds Center
2520 Northwinds Parkway
5th Floor
Alpharetta, GA 30004
Facsimile: 770 625-6889

Dear MCI:

This letter is notification that Verizon –New York is disputing charges totaling $119,436.02 on the July 10, 2001 invoice for account 212 DNY-0132 M00.

In accordance with the FCC's April 18, 2001 Order governing intercarrier compensation for Internet traffic, effective June 14, 2001, traffic exceeding a 3:1 ratio of terminating to originating traffic is presumed to be internet traffic. In accordance with the order noted above, 2001 compensable internet minutes are rated at $0.0015 per minute. For 2001, the compensable internet minutes are those minutes up to a ceiling equal to, on an annualized basis, the number of compensable Internet minutes during the first quarter of 2001, plus a 10% growth factor.

MCI billed Verizon for local traffic delivered from June 14, 2001 to June 30, 2001, at a rate of 0.0088390,0.0038160 and 0.0025020 per minute. Verizon is disputing charges totaling $119,436.02 representing the difference between the amount that MCI charged Verizon, and the amount due under the FCC's order.

Thank you for your attention to this matter. If you have any questions, please contact me at 212 395-3202.

Sincerely,

Lori Carbone

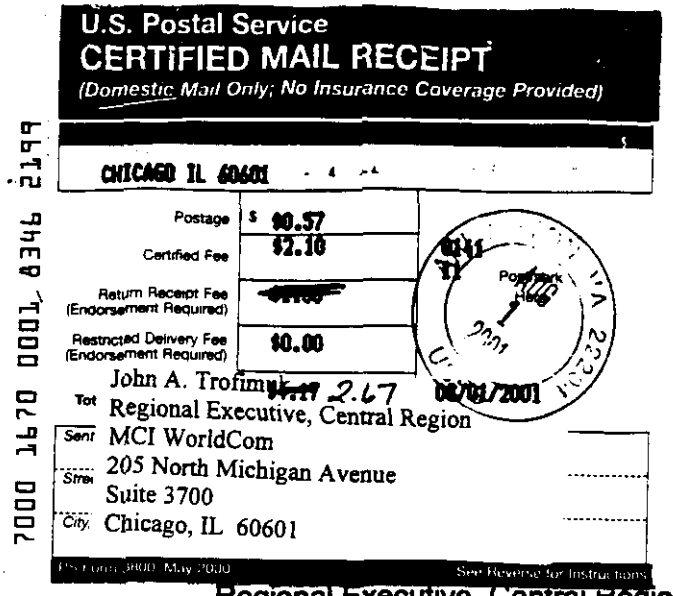
cc: MCI WorldCom
Attn: Vice President - Network Financial Management
8521 Leesburg Pike
7th Floor
Vienna, VA 22182
Telephone: 703 715-7000
Facsimile: 703 918-6602

MCI WorldCom
Chief Counsel - Business Transactions
1801 Pennsylvania Ave. N.W.
Washington, DC 20006
Telephone: 202 872-1600
Facsimile: 202 887-2454

MCI WorldCom
Attn: Senior Manager - Carrier Agreements
8521 Leesburg Pike
6th Floor
Vienna, VA 22182
Telephone: 703 715-7000
Facsimile: 703 918-0710

MCI WorldCom
Attn: Dan Aronson
Director, Carrier Access Billing
500 Clinton Center Drive
Clinton, MA 39056
Telephone: 601 460-8060
Facsimile: 601 460-5115

EXHIBIT 6



verizon
1320 North Court House Road
8th Floor
Arlington, Virginia 22201

July 31, 2001

Regional Executive, Central Region
MCI WorldCom
205 North Michigan Avenue
Suite 3700
Chicago, IL 60601

Re: Implementation of FCC's *Order on Remand*

Dear Mr. Trofimuk:

I write to respond to your June 12, 2001 letter to Jeffrey A. Masoner, Vice President Interconnection Services, on behalf of MCI WorldCom of Maryland ("WorldCom"), and to follow up on my June 18 letters, in which Verizon provided WorldCom with a short amendments to memorialize in its two agreements in Maryland the application of the FCC's *Order on Remand and Report and Order*, CC Docket Nos. 96-98, 99-68 (adopted April 18, 2001) ("*Order*"). The two agreements are with MCImetro Access Transmission Services LLC and MCI WorldCom Communications, Inc. For your convenience, copies of both letters are attached.

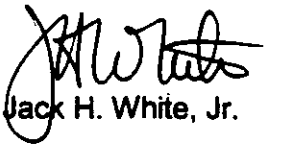
In your letter, you claim that the Verizon and MCImetro Access Transmission Services, LLC agreements requires Verizon to negotiate amendments prior before it can implement the FCC's *Order*. In my June 18 letter, Verizon offered WorldCom a short amendment to memorialize in its Maryland agreement the application of the FCC's *Order*. According to our records, you have not contacted us to negotiate revisions to that proposed amendment and have not otherwise responded to the letter. Under section 2.2 of the agreement, WorldCom is required to negotiate amendments called for by such changes in law "promptly" and in "good faith," and Verizon is contractually entitled to seek redress if the parties cannot come to an agreement on an amendment within 30 days of the effective date of the FCC's *Order*. The rate-setting provisions of the FCC's *Order* were effective on June 14, 2001.

You also say in your letter that Verizon owes MCI "reciprocal compensation for calls to ISPs as local calls under the terms of existing

interconnection agreements[.]" We are not sure what this is in reference to, but suffice it to say that the FCC's *Order* has now made it clear that Internet-bound traffic is not now and, under the FCC's interpretation of the Act, never has been subject to reciprocal compensation under Section 251(b)(5).

Verizon would like to get the amendments to the WorldCom agreements finalized and submitted to the Maryland Public Service Commission in the next few days. Please send me any revisions you may have to Verizon's proposed amendment as soon as possible and let me know when you will be available to meet by telephone. Unless we hear from you shortly, we will file the amendment with the Commission.

Sincerely,



Jack H. White, Jr.

Attachments

EXHIBIT 7

MCI WORLDCOM

John A. Trofimuk
Regional Executive
Central Region
Telco and Line Cost Management

June 12, 2001

Via Overnight Courier

Jeffrey A. Masoner
Vice President Interconnection Services
Verizon
2107 Wilson Blvd
11th Floor
Arlington, VA 22201

Dear Mr. Masoner:

We received your industry letter dated May 14, 2001 regarding the FCC's ISP-Traffic Order and Verizon's plans to implement that order. I am writing to take issue with the unilateral manner in which Verizon apparently plans to implement the FCC's Order. A discussion of the details of your letter and the various aspects of the FCC's Order is best left for later and the negotiations that will follow as described below. In the meantime, WorldCom expects Verizon to comply with the provisions of our existing interconnection agreements unless and until those agreements are amended.

In its Order, the FCC altogether abandoned its prior approach to reciprocal compensation for calls to ISPs and announced a completely new and prospective rule for addressing how local carriers are to be compensated when they exchange calls to ISPs. In sum, the FCC concluded that, as of the effective date of its Order (June 14, 2001), calls to ISPs are to be considered interstate "information access" services that purportedly do not fall within the section 251(b)(5) mandatory requirements. Because carriers incur costs when they exchange and deliver calls to ISPs, however, the FCC concluded that a form of inter-carrier compensation is necessary for the exchange of this traffic. Therefore, the FCC announced an interim scheme that imposes rate and growth caps to govern the exchange of calls to ISPs.

At the same time, the FCC took great pains to emphasize that its new rule is purely prospective and does not alter existing interconnection agreements or state commission decisions. The Order states:

> The interim compensation regime we establish here applies as carriers re-negotiate expired or expiring agreements. It *does not alter existing contractual obligations*, except to the extent that parties are entitled to invoke contractual change-of-law provisions. This Order does not preempt any state commission decision regarding compensation for ISP-bound traffic for the period prior to the effective date of the interim regime we adopt here. ISP-Traffic Order at ¶ 82 (emphasis added).

205 North Michigan Avenue
Suite 3700
Chicago, IL 60601
312 470 5947

While purporting to give effect to the FCC's Order, your letter seemingly ignores paragraph 82 and the FCC's full intent. For example, your letter announces Verizon's intention unilaterally to apply the FCC's transitional rate caps and growth caps to any interconnection agreement that does not expressly address Internet traffic. But paragraph 82 is central to the Order and has the following effects:

First, Verizon owes WorldCom payment for ISP-bound traffic in accordance with the provisions of previous and currently existing interconnection agreements. WorldCom expects Verizon to make such payments promptly (with interest and all other related charges). Verizon cannot ignore the prior state commission holdings that calls to ISPs are properly treated as local calls compensable under existing interconnection agreements. The FCC's Order has no impact on Verizon's current obligation in any state to pay reciprocal compensation for ISP traffic under existing contractual arrangements. Your letter contends that, because the FCC has determined that calls to ISPs are interstate and beyond the scope of section 251(b)(5), Verizon was never obligated to pay reciprocal compensation for calls to ISPs. This position, however, ignores the explicit recognition by the FCC that its Order does not preempt or upset prior findings by state commissions that calls to ISPs were local and subject to reciprocal compensation under existing interconnection contracts.

Second, Verizon cannot unilaterally alter the manner in which it performs its current obligations under the Verizon/WorldCom interconnection agreements. The FCC made clear that any changes to Verizon's existing obligations must come through, and in accordance with, the relevant change-of-law provisions in our interconnection agreements. Your letter categorically invokes Verizon's rights under the change-of-law provisions of our interconnection agreements. Your letter, however, stops there without any indication as to what those provisions say or what Verizon believes should be the next step in the change-of-law process. Since Verizon has claimed to invoke the rights under the change-of-law provisions, presumably Verizon is drafting amendment language conforming to the FCC's Order and will present such language to WorldCom as part of a negotiation process to amend our interconnection agreements.

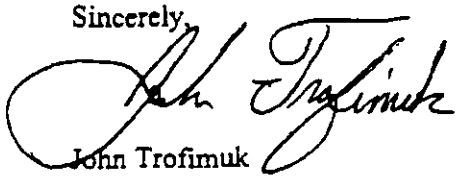
We also wish to note that you have not identified the change of law provisions you claim are triggered by the FCC's Order. As part of the negotiation process, we would request that you identify the change of law provisions you believe are triggered, and the reason you believe they are triggered, particularly in light of Verizon's past and current views on amendments to interconnection agreements. Upon a satisfactory explanation, WorldCom is prepared and willing to negotiate in good faith appropriate amendments to our interconnection agreements. Notwithstanding our offer to negotiate under the change-of-law provisions, WorldCom specifically reserves its right to claim that the change-of-law provisions are inapplicable or inappropriately triggered.

While the FCC's Order prospectively removes calls to ISPs from section 251(b)(5)'s mandatory requirements, Verizon remains contractually obligated to pay reciprocal compensation for calls to ISPs as local calls under the terms of existing interconnection agreements consistent with prior state commission orders. Until and unless an appropriate amendment is put in place to effectuate this "change-of-law" announced by the FCC, Verizon's present contractual obligations, as previously determined by the relevant state commission, remain applicable. Accordingly, any attempt by Verizon to change unilaterally the status quo with respect to payment of reciprocal

MCI WORLDCOM

compensation for calls to ISPs under existing agreements, unless and until those agreements are amended, is, and will be considered, a breach of the existing agreements.

Sincerely,



John Trofimuk

cc: Steve Pitterle (via facsimile – (972) 718-1279)
Dan Aronson
Marcel Henry